by his pre-occupation creditor, such credit balance must first be applied to the most recent occupation period debt;

(b) if after the liquidation of the most recent occupation period debt there still remains a credit balance, such balance must be applied to the second most recent occupation period debt, and so on;

(c) if after satisfying all occupation period debts a credit balance still remains, that balance must be applied to any pre-occupation debts and the rule in *Clayton's Case* applies to such application;

(d) such credit balance will be reckoned at its face value if it appears in the accounts before the last day of December, 1942;

(e) if it appears in the accounts after the last day of December, 1942, such balance (but not the amount applied to liquidate the occupation period debts) must be re-valued in accordance with the Schedule to the Ordinance; and finally

(f) if any credit appears in the accounts after the 15th day of February, 1942, and there is at the time no occupation period debit balance, such sum must be applied to the pre-occupation balance.

Now, applying this procedure to the facts of the present case, it will be found that on the 31st December, 1942 (the date upon which Malayan currency and occupation currency ceased to be at parity) the appellants' pre-occupation credit balance of $49,900 had been reduced to $1,650. By the 7th January, 1943, further sums amounting to $3,150 had been credited to respondent's account but there had been no more debit entries. When re-valued these latter credits were far more than required to complete the liquidation of the whole pre-occupation period credit. From the 7th January, 1943, onwards the parties alternated as creditors and on the 6th August, 1945, (the date mentioned in the statement of claim) there was a small balance standing to the credit of the appellants. This balance does not appear in the accounts as exhibited: it only emerges after applying the procedure I have attempted to summarise above. That balance, however, was an occupation period debt and falls to be re-valued under section 6 of the Ordinance and is thereby extinguished by virtue of the provisions of paragraph (a) thereof. It follows that no part of the amount claimed by appellants remains due. Thus, though for different reasons, I arrive at the same conclusion as the learned trial Judge.

In my opinion this appeal should be dismissed and respondent should have his costs in this Court and in the Court below. The sum of $500 deposited in Court by appellants should be paid out to respondent against his costs.

Appeal dismissed.

THE FIRM OF T.AR.CT. v. THE FIRM OF S.V.K.R.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore), and Pretheroe, J.) August 16, 1952]

[Penang — Civil Appeal No. 60 of 1952]

Agency — Contract — Money borrowed on Thavanai letters — Discharge of debt by payment to ostensible agent.

In 1941 the respondents approached a chettiar firm O.RM. for a loan of $5,000. A cheque for $5,000 from the appellants was given to the respondents and the respondents gave two Thavanai letters one of them for $3,000 in the name of the appellants. The agent of the appellant firm was one Arunasalam Chettiar, and that of O.RM. one Annamalai Chettiar. These two firms worked in close collaboration and they shared an office. On the 11th of December 1941 Arunasalam Chettiar was killed in an air raid and after his death Annamalai Chettiar carried on the joint business of the two firms until 1946 when he returned to India. In June 1943, the respondents paid to Annamalai Chettiar the principal and interest due in respect of the loan of $3,000 and received back the Thavanai letter endorsed with a receipt signed by Annamalai Chettiar as agent of O.RM. for the appellants.

The short point in the case was whether Annamalai Chettiar who was the agent of O.RM. had authority to receive the money and give a receipt which was a valid discharge of the debt owing by the respondent firm. The learned trial Judge held that the respondents had made payment to an ostensible agent of the appellant firm who held the document and he dismissed the appellants' claim for recovery of the debt.

Held, on appeal (Sir Charles Murray-Aynsley, C.J. Singapore, dissenting), that on the facts Annamalai Chettiar was the ostensible agent of the appellants and therefore the payment to him instituted a valid discharge of the debt.

Cases referred to:—

(1) *Barrett v. Deere* M. & M. 200; 173 E.R. 1131.

(2) *Wilmot v. Smith* M. & M. 238; 173 E.R. 1144.

COURT OF APPEAL, appeal from the decision of Spenser Wilkinson, J., reported *ante*, p. 3.

F. G. Charlesworth for the appellants.

R. D. Hume for the respondents.

Cur. Adv. Vult.

Mathew, C.J., (F.M.) : — The main facts in this case present no difficulty. In 1941 the respondents approached a Chettiar Firm known as O. RM. M. SP. SV. (hereinafter referred to as O. RM.) for a loan of $5,000. A cheque for $5,000 from the appellants was given to the respondents, and the

respondents gave two Thavanai letters, one of them for $3,000 in the name of the appellants, and it is in respect of this transaction that the present suit was brought.

The agent of the appellant firm was one Arunasalam Chettiar, and that of O. RM. one Annamalai Chettiar. These two firms worked in close collaboration, and they shared an office, the staff being provided by O. RM. All loans which were made from the funds of the principals were dealt with by the agent of O. RM., and T. AR. CT. would advance a part of the money required for the loans to the agent of O. RM. O. RM. was the larger firm, and sixty-six per cent of the loans were generally advanced by them. Certain loans which were made from the T. AR. CT. Charitable Funds were always put out on Thavanai letters in the name of T. AR. CT.

On the 11th of December, 1941, Arunasalam Chettiar was killed in an air raid. Three days before, Annamalai Chettiar and Arunasalam Chettiar had gone to live at the Waterfall Temple in Penang, and had taken with them a number of the account books and papers of their two firms. After the death of Arunasalam Chettiar, Annamalai Chettiar carried on the joint business of the two firms until 1946 when he returned to India.

In June 1943, the respondents paid to Annamalai Chettiar the principal and interest due in respect of the loan of $3,000 and received back the Thavanai letter which was endorsed as follows:—

"Dated the 11th day of Auni Subanu year. Excluding the interest received up till 30th day of Vaigasi, current year (14.6.43) per this letter, received through cheque No. 53102 drawn on the Indian Overseas Bank for three thousand dollars and cash two dollars and seventy-five cents, total $3,002.75 in settlement of principal of $3,000 and 11 days interest of $2.75 from the 31st day of the aforesaid month till 10th of current month and this letter has been settled.

Sd: Annamalai Chettiar, Agent of O.RM.M.SP.SV. for T.AR.CT. Kuppan Chettiar. 25.6.2603."

The short point in this case is whether Annamalai Chettiar who was the agent of O. RM. had authority to receive the money, and give a receipt which was a valid discharge of the debt owing by the respondent firm. The learned trial judge, in discussing the appellants' claim, found as follows:—

"On the evidence as a whole I am satisfied that the defendants made repayment of this loan to an ostensible agent of the plaintiffs' firm, who held the document, and the plaintiffs' claim therefore fails."

Although the pleadings are not as precise as they might be, it is perfectly clear that the issue before the learned trial judge and before us was, whether in fact Annamalai Chettiar was the agent of T. AR. CT. and able to give a valid discharge of the debt on behalf of T. AR. CT. The appellants' main submission is that after the death of Arunasalam Chettiar there was nobody in Penang who was the agent of the plaintiffs, and that this disposes of the case.

Mr. Hume for the respondents argued that in all the circumstances of the case Annamalai Chettiar was an ostensible agent of T. AR. CT. In support of his argument he quoted *Chitty on Contracts* (20th ed.) page 266:—

"Payment to an agent binds the principal, if the agent has either a real or an ostensible authority to receive payment, as for example, a person apparently entrusted with the conduct of plaintiff's business although he had not in fact any authority to receive payment. There is no general rule that an agent who is authorised to sell on behalf of his principal is also authorised to receive the purchase money."

The cases that support this statement of the law are contained in *Barrett v. Deere*[1] and *Wilmot v. Smith*[2]. In the former case the heading reads as follows:—

"Payment to a person found in a merchant's counting-house and appearing to be interested with the conduct of the business there, is good payment to the merchant, though it turns out that the person was never employed by him."

And in *Wilmot v. Smith*[2]:—

"A tender to a person in the office of the plaintiff's attorney, who is referred to on the subject by a clerk in the office, and refuses the tender as being of an insufficient sum, is a good tender, without showing who that person was."

The basis of this last decision was that the person who had refused the tender did not do so on the ground that he was not authorised.

There is no dispute in this case that the firms of O. RM. and T. AR. CT. carried on business in the same room, that T. AR. CT. had an interest in many of the loans made by O. RM., and that the loan of $3,000, the subject of this case, was in fact arranged by Annamalai Chettiar. In my view, it would be impossible on the facts and having in mind that the loan emanated from the T. AR. CT. Charitable Funds, to hold that Annamalai Chettiar was not the ostensible agent of the plaintiffs-appellants.

I would accordingly dismiss this appeal with costs here and in the Court below, and order that the deposit of $500 be paid to the respondents towards their costs.

Sir Charles Murray-Aynsley, C.J., (Singapore): —The facts in this case are simple. In 1941 there were functioning in Penang two Chettiar firms which may be conveniently referred to as T. AR. CT. and O. RM. It appears that they were closely associated. The agent of the former was one Arunasalam Chettiar and of the latter one Annamalai Chettiar. The T. AR. CT. agent had in his hands, besides funds of his principals, funds of what was known as the T. AR. CT. Charitable Trust. The course of business of the two firms seems to have been as follows: Where funds of the principals were to be dealt with the agent of

O. RM. would make a loan and the agent of T. AR. CT. would advance part of the money required to the agent of O. RM. That is, the ultimate borrower would deal with the O. RM. firm, though the other firm would provide part of the money, usually a third. The banking account of T. AR. CT. was in the hands of the agent of the firm. The agent of O. RM. could not draw on it. There is evidence that the agent of T. AR. CT. was instructed to follow the directions of the agent of O. RM. in disposing of the funds of his firm. In the case of funds of the Charitable Trust the procedure was different. These funds were put out on "Thavanai" letters among Chettiar firms in the name of T. AR. CT.

In the course of September, 1941, the defendants, a Chettiar firm known as S.V. K.R. of Sungei Patani approached the O. RM. agent for a loan of $5,000. As a result the defendants received a cheque of $5,000 from T. AR. CT. and gave two "Thavanai" letters, one of them in the name of T. AR. CT. Charitable Trust in the following form :—

"31st day of the month of Avani, Visu Year (16.9.41).

"Sithambaram hereby writes. Received from you $3,000 on current date. We have credited this three thousand dollars in the name of T.AR.CT. Charity Fund Trust through you from current date at 5/16% interest, i.e. interest rate at 3/32% over and above the rate of interest ruling for the Penang three months 'Thavannai' (account). We hereby agree to pay the principal and interest to your order at Penang on due date and get back this letter endorsed.

Sgd. Sithambaram Chettiar
attorney of SVKR."

Rather less than three months later, that is, before any interest was payable, the T. AR. CT. agent was killed in an air raid and no one was appointed to succeed him.

Later, in June, 1943, the defendants repaid the loan to the O. RM. agent who indorsed the letter as follows :—

"Dated the 11th day of Auni, Subanu year.

Excluding the interest received up till 30th day of Vaigasi, current year (14.6.43) per this letter, received through cheque No. 53102 drawn on the Indian Overseas Bank for three thousand dollars and cash two dollars and seventy five cents, total $3,002.75 in settlement of principal of $3,000 and 11 days' interest of $2.75 from the 31st day of the aforesaid month till 10th of current month and this letter has been settled.

Sgd. Annamalai Chettiar, Agent of O.RM.M.SP.SV.
for T.AR.CT. Kuppan Chettiar. 25.6.2603."

The plaintiffs, T. AR. CT., sought to recover the sum lent. In answer to a letter from the plaintiffs' solicitors the solicitors of O. RM. wrote as follows :—

"As there was nobody to take charge of the affairs of T.AR.CT., the said Annamalai Chettiar, in his own capacity and not as agent for the firm of O.RM.M.SP. SV., acting no doubt in the best interests of the proprietor of the firm, took over the assets and helped in the management of the firm."

Later when the defendants had been approached, the defendants' solicitors replied :—

"Our clients say that the sum of $3,000 and all interest due on the 'Thavannai' letter has been paid and settled."

In October, 1949, the plaintiffs issued a specially indorsed writ. The defendants filed a defence which is instructive. The material parts are as follows :—

"3. The said Annamalai Chettiar gave the defendants a cheque from O.RM.M.SP.SV. Firm and the defendants later gave the said Annamalai Chettiar two 'Thavannai' letters, one in the name of Muthukaruppi Achi for $2,000 and the other for $3,000 in the name of T.AR.CT. Charitable Trust in accordance with instructions from the said Annamalai Chettiar.

4. All interests on the said loan were paid to the said Annamalai Chettiar from time to time, and on the 25th of June, 1943, the defendants paid to the said Annamalai Chettiar the principal and interest thereon due on the said loan and received back the 'Thavannai' letters duly cancelled."

It is clear that the pleader was uncertain of what his defence might be. He does not plead agency in terms. He appears to be pleading that the loan was made on behalf of the O. RM. firm.

In their reply the plaintiffs denied, *inter alia*, agency of Annamalai Chettiar for the purpose of receiving money and giving receipts.

At the trial the defendants seem to have run several defences. Of these the learned Judge found against the contention of the defendants that by custom of Chettiars the repayment to the O. RM. agent was good, as he was the person who negotiated the loan, as this would have been contrary to the terms of the written agreement. He also found that the act of the O. RM. agent in receiving the money had not been subsequently ratified by the T. AR. CT. principal. He did, however, find in favour of the defendants on the ground that the agent of the O. RM. firm was a general agent for the T. AR. CT. firm. The learned Judge found in the following terms :—

"I think this evidence of the close relationship between the two firms is borne out by the very large volume of business shown to have been done by the two firms jointly, most of the investments being in the name of O.RM. Although they each had some separate transactions they were virtually joint firms.

I have come to the conclusion that the true position with regard to the two firms O.RM. and T.AR.CT. was that at the time when both agents were alive both were general agents of both firms, although the agent of O.RM. had a dominant voice in the management of both. It was clearly necessary for the T.AR.CT. firm to have someone in Penang with a power of attorney who could sign cheques, deeds and other necessary documents for T.AR.CT. under that power, but the fact that a firm has an agent with a power of attorney does not preclude that firm from having other agents with general powers to act on their behalf in matters which do not necessitate a written power of attorney. It seems to me that in effect, in this case, Annamalai Chettiar was the agent who decided questions of policy by signing the necessary documents such as cheques or deeds. In my opinion, therefore, Annamalai Chettiar was a general agent of both firms, so that when Arunasalam Chettiar was killed it was right that he should take charge of the books and

business of the T.AR.CT. firm and carry on their business until he was in a position to receive further instructions from India."

I am unable to follow this. I should not have thought that an order to follow the directions of the agent in making loans would in any sense have made the other agent an agent of T. AR. CT. capable of binding that firm by his acts. I do not think that it is any relation of principal and agent that is involved. If there were it would only be a question of particular and not general agency. The matter is also unsatisfactory in view of the defence filed by the defendants. Counsel for the plaintiffs at the trial objected to the question of agency being raised. We have no evidence of actual authority of the O. RM. agent to receive money or give receipts. There is also no question of holding out. The loans of funds other than charitable funds did not bring third parties in contact with T. AR. CT. at all. The loans of charitable funds were expressly made by T. AR. CT. and there is no evidence of any payments to the O. RM. agent during the lifetime of the T. AR. CT. agent. I cannot see anything in the relations of the two firms which would lead third parties to conclude that the O. RM. agent had any authority to receive money and give receipts on behalf of T. AR. CT. The whole evidence shows that this was the business of the T. AR. CT. agent. This is particularly the case where all concerned were Chettiars engaged in transactions of this kind. The authority of the accredited agent of a Chettiar firm is well known.

In my opinion judgment should have been entered for the plaintiffs. The appeal should be allowed with costs.

Pretheroe, J. : — The essential facts in this case are not in dispute. In the year 1941 the plaintiffs made a loan of $3,000 to defendants. The plaintiffs were represented in Penang by an attorney who was killed by enemy action in the early days of the war in Malaya. The defendants paid the interest as, and when, it fell due to one Annamalai and finally repaid the capital in June, 1943, to the same Annamalai. This Annamalai was the attorney in Penang of another Chettiar firm known as O. RM. M. SP. SV. (hereinafter in this judgment referred to as "the third firm"). It is alleged that the amount never reached the plaintiffs so they instituted this action against the defendants claiming the sum of $3,809.45 as being the capital and interest then due to them.

In a carefully prepared judgment the learned trial Judge found that "the defendants made repayment of this loan to an ostensible agent of the plaintiff firm, who held the document, and the plaintiffs' claim therefore fails."

Against this decision the plaintiffs appealed and were represented at the hearing of the appeal by Mr. Charlesworth. Mr. Hume appeared for the respondents.

At the hearing of the appeal Mr. Charlesworth based his case on two main grounds. The first was that the case had been decided on an issue not on the record *viz.* that Annamalai was the ostensible agent of the plaintiffs. It is quite true that the defence stated that all interest on the loan was paid to, and the capital itself was repaid to, Annamalai and made no mention that it was paid to him in his capacity as agent for the plaintiffs. But the same reply had stated in an earlier paragraph that Annamalai made the original advance by giving a cheque drawn upon the third firm (of which he was the attorney). On the evidence this averment was in fact in error and in their reply the plaintiffs pleaded that "at no time was the said Annamalai the agent of the plaintiffs authorised to receive money and give receipts on their behalf." That the error on the part of the defendants caused no embarrassment is perfectly clear from the final addresses of counsel. Each agreed that the only point in the case was whether Annamalai was the agent of the plaintiffs for the purpose of receiving the repayment of this loan. The issue was thus squarely before the Court, and without any protest from plaintiffs' counsel, and was in fact the only issue considered by the trial Judge. In these circumstances I would dismiss Mr. Charlesworth's first ground.

Mr. Charlesworth's second submission was that the learned trial Judge was in error in finding that Annamalai was the ostensible agent of the plaintiffs. His case was that Annamalai was not an agent of the plaintiffs' at all and that therefore no question of the extent of his powers as an agent for the plaintiffs need be considered.

At this stage I may remark that I have had the advantage of reading the draft judgment in this appeal prepared by the learned Chief Justice of Singapore, for whose legal knowledge and acumen I have had the greatest respect for many years, and find that I have reached a different conclusion on this ground of appeal. For this reason I propose to set out the reasons for my decision at greater length than I would otherwise have done.

It was common ground that, if Annamalai had the required authority as agent for the plaintiffs immediately prior to the occupation, section 3 of the Agents and Trustees (Occupation Period) Ordinance, 1949, preserved that authority in him during the occupation period. There is no documentary evidence in support of such authority and, although the learned

trial Judge arrived at the conclusion that, at the time when plaintiffs' attorney was alive, he and Annamalai were both "general agents of both firms" (i.e. the plaintiff firm and the third firm) his final conclusion was based on another ground. And this latter ground did not require the finding of general agency to sustain it. As I view this case, the precise extent of Annamalai's authority (if any) before the occupation has not been proved. For this reason, therefore, I do not think that the Ordinance to which I have just referred carries the matter any further. The leading feature in Mr. Charlesworth's argument was that there was direct documentary proof that, before the occupation, plaintiffs had an agent in Penang, duly appointed under a power of attorney, who had authority to receive money for his principal. He also had power to appoint a substitute attorney but there was no evidence whatever to show that, at the time he unfortunately met his death by enemy action, he had ever exercised this power. In these circumstances Mr. Charlesworth submitted that, after the death of plaintiffs' attorney, there remained no person in Penang authorised to accept money on behalf of the plaintiffs.

This submission may very well be true but it overlooks the fact that there still might have been a person, without any authority from plaintiffs, who did in fact receive the money in such circumstances as to constitute a discharge of defendant's liability. (*Barrett v. Deere*[1]). This is in fact the case advanced by Mr. Hume on behalf of the defendants *viz.* that Annamalai received the payment as the ostensible agent of the plaintiffs. The matter is put thus by the editors of *Chitty on Contracts* (20th Edition) at page 266 :—

> "Payment to an agent binds the principal, if the agent has either a real or an ostensible authority to receive payment, as for example, a person apparently entrusted with the conduct of plaintiff's business although he had not in fact any authority to receive payment."

The authorities cited in support of that view are *Barrett v. Deere*[1] and *Wilmot v. Smith*[2]. The facts in the former case were that defendant owed plaintiff some money but the precise amount so owing was in dispute. In these circumstances defendant sent a messenger to pay the amount admitted and to hand over a letter stating his objections to the items in dispute. The messenger proceeded to the plaintiff's counting-house, where he found a person sitting within a railed off area with account books near him, so he handed over the cash and letter to that person. The latter read the letter; referred to the account books and said he would say nothing in reply. He also gave a receipt for the amount actually paid. In fact the person sitting in the counting-house was not in plaintiff's employment but nevertheless the payment was held to be a valid discharge of that part of the debt which was actually paid to that person. This basis of the decision was that in a great business area no transaction could be carried on if it were not sufficient for a purchaser to send his money to the seller's counting-house and pay it to any person he finds there, whether actually authorised to receive it or not, who appears to be interested with the conduct of the business. In my view the facts of the present case are even more compelling. Defendants' representative went to the room where both plaintiffs and the third firm carried on their businesses. There he arranged terms of the loan with Annamalai, and Annamalai signed the Thavanai letter. He signed thus "Annamalai Chettiar, Agent of" the third firm "for" the plaintiffs. That letter clearly shows that the loan was repayable to the plaintiffs. Before the occupation defendant paid the interest as, and when, due to Annamalai. After the occupation, and after the destruction of the business premises, he sought out Annamalai and continued to pay him the interest. And finally, in June, 1943, the defendants repaid the capital to Annamalai. Thus the defendants knew the loan was from the plaintiffs but every single transaction was conducted between themselves and Annamalai. In the circumstances can it reasonably be suggested that they, the defendants, did not regard Annamalai as the agent of the plaintiffs?

For these reasons, with respect, I agree with the finding of the learned trial Judge that Annamalai was, for the purposes of this transaction, the ostensible agent of the plaintiffs. Consequently I would dismiss this appeal and would grant defendants their costs in this Court and in the Court below. I would also order that the $500 deposited in Court by the appellants should be paid out to defendants against their costs.

Appeal dismissed.

ONG SENG HUAT v. NYAK WAN & ORS.

[Orig. Civ. Juris. (Spenser Wilkinson, J.) September 6, 1952]

[Penang — Civil Suit No. 186 of 1950]

[Penang — Summons-in-Chambers No. 185 of 1952]

Practice and procedure — Costs — R.S.C., O. 62 r. 66(1) — Change of Solicitor — Validity of distinction between Solicitor and Client and Solicitor and Own Client taxation.

This was an application to vary the Registrar's Certificate which had allowed certain items of costs resulting from the 3rd defendant's change of solicitor. The 3rd defendant was one of three Receivers and managers of an estate and he had engaged a separate solicitor.